

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE ANNUITY, WELFARE, APPRENTICESHIP SKILL  
IMPROVEMENT & SAFETY FUNDS of the  
INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 15, 15A, 15C and 15D, AFL-CIO, by its TRUSTEES  
JAMES T. CALLAHAN, ROBERT SHAW, RUSSELL  
SHAW and CHRISTOPHER WARD, and JOHN and JANE  
DOE, as Beneficiaries of the ANNUITY, WELFARE, and  
APPRENTICESHIP SKILL IMPROVEMENT & SAFETY  
FUNDS of the INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15, 15A, 15C and 15D, AFL-CIO,

07-CIV-11120  
CASTEL, J.

Plaintiffs,

-against-

STONEWALL CONTRACTING CORP.,

Defendants.  
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Defendant Stonewall Contracting Corp., (hereinafter "Defendant") by its attorneys, The  
Ziskin Law Firm, as and for its Answer and Affirmative Defenses, alleges as follows:

01. With regard to paragraphs numbered "1", "2" and "3" of the Complaint Defendants  
assert that such allegations contain legal conclusions which are for consideration of the Court.

02. Denies knowledge and information sufficient to form a belief as to each and every  
allegation set forth in paragraphs numbered "4" and "5" of the Complaint and assert that such  
allegations contain legal conclusions which are for consideration of the Court..

03. Denies knowledge and information sufficient to form a belief as to each and every  
allegation set forth in paragraph numbered "6" of the Complaint.

04. Denies knowledge and information sufficient to form a belief as to each and every allegation set forth in paragraphs numbered "7", "8", "9" and "10" of the Complaint and assert that such allegations contain legal conclusions which are for consideration of the Court.

05. Admits each and every allegation set forth in paragraphs numbered "11" of the Complaint

06. Denies each and every allegation set forth in paragraphs numbered "12" and "13" of the Complaint.

07. With regard to paragraph numbered "14" of the Complaint Defendants assert that such allegations contain legal conclusions which are for consideration of the Court.

08. With regard to paragraph numbered "15" of the Complaint, Defendant repeats and realleges each and every portion of its Answers to paragraphs numbered "1" through "14" of the Complaint as if more fully set forth herein at length.

09. Denies knowledge and information sufficient to form a belief as to each and every allegation set forth in paragraphs numbered "16", "17" and "18."

10. Denies each and every allegation set forth in paragraphs numbered "19", "20" and "21" of the Complaint.

11. With regard to paragraph numbered "22" of the Complaint Defendants assert that such allegations contain legal conclusions which are for consideration of the Court.

12. Denies each and every allegation set forth in paragraphs numbered "23" of the Complaint.

13. With regard to paragraph numbered "24" of the Complaint, Defendant repeats and realleges each and every portion of its Answers to paragraphs numbered "1" through "23" of the Complaint as if more fully set forth herein at length.

14. Denies each and every allegation set forth in paragraphs numbered "25" and "26" of the Complaint and asserts that such allegations contain legal conclusions which are for consideration of the Court.

15. Denies each and every allegation set forth in paragraphs numbered "27" and "28" of the Complaint.

**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST SEPARATE  
AND DISTINCT AFFIRMATIVE DEFENSE**

16. Plaintiffs have failed to set forth a cause of action upon which relief may be granted.

**AS AND FOR A SECOND SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE**

17. Upon information and belief, it is contended that the instant allegations in the Complaint allege violations of the National Labor Relations Act, which allegations are time barred and for each of such reasons the United States District Court is pre-empted from considering such allegations with respect to each of the Defendants.

**AS AND FOR A THIRD SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE**

18. Plaintiffs seek to recover contributions allegedly due and owing for individuals who are outside the jurisdiction of the International Union of Operating Engineers, Local 15, 15A, 15 C and 15D, AFL-CIO Collective Bargaining Agreements.

**AS AND FOR A FOURTH SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE**

19. Plaintiffs seek to recover contributions allegedly due and owing for individuals who are not employees as defined by the International Union of Operating Engineers, Local 15, 15A, 15 C and 15D, AFL-CIO Collective Bargaining Agreements.

AS AND FOR A FIFTH SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE

20. Plaintiffs seek to recover contributions allegedly due and owing for employees outside of the trade classification as defined in the International Union of Operating Engineers, Local 15, 15A, 15 C and 15D, AFL-CIO Collective Bargaining Agreements.

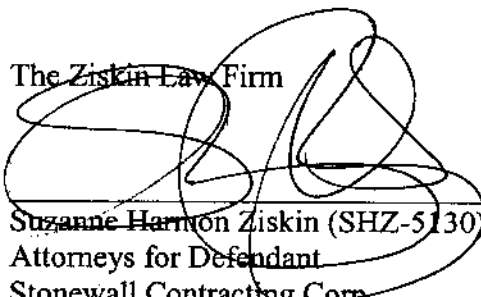
AS AND FOR A SIXTH SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE

21. Defendant has paid all contributions due and owing under the Collective Bargaining Agreement.

Dated: Commack, New York  
January 17, 2008

By:

The Ziskin Law Firm

  
Suzanne Harmon Ziskin (SHZ-5130)

Attorneys for Defendant

Stonewall Contracting Corp.

Office and P.O. Address:

6268 Jericho Tpke., Suite 12A

Commack, New York 11725

(631) 462-1417

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)  
COUNTY OF SUFFOLK)

RICHARD B. ZISKIN, being duly sworn, deposes and says:

I am not a party to the action, am over eighteen years of age, and reside at  
Smithtown, New York. On January 17, 2008, I served a true copy of Defendants'  
Answer and Affirmative Defenses in the following manner: by mailing same in a sealed  
envelope, with postage pre-paid thereon, in a post office or official depository of the U.S.  
Postal Service within the State of New York, addressed to the last known address of the  
addresses as indicated below:

Brady, McGuire & Steinberg  
603 Warburton Avenue  
Hastings-on-Hudson, New York 10706  
Att: James M. Steinberg, Esq.

  
\_\_\_\_\_  
RICHARD B. ZISKIN

Sworn to before me this  
17<sup>th</sup> day of January, 2008

Notary Public

**SUZANNE H. ZISKIN**

Notary Public, State of New York

No. 02218007115

Qualified in Suffolk County

Commission Expires 05/18/10